

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Crl.Rev.Pet.No. 3033 of 2007()

CRA.463/2006 of SESSIONS COURT, KOZHIKOE
CC.119/2004 of JUDL.MAGISTRATE OF FIRST CLASS, PERAMBRA
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REVN. PETITIONER: APPELLANT/ACCUSED

BINU, S/O. GOPALAN, AGED 35 YEARS,
MUNDAKKAL HOUSE, CHANGARATH P.O., AVADUKKA,
PERUVANNAMUZHI, KOZHIKODE.

BY ADV. SRI.NIDHI BALACHANDRAN

RESPONDENTS: RESPONDENTS / STATE

STATE OF KERALA, REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR, J.

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Crl. R.P. No.3033 of 2007

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Dated, this the 19th day of September 2007

ORDER

Revision petitioner who was the driver of a pick-up van challenges the conviction entered and the sentence passed against him by the courts below for offences punishable under Sections 279, 338 and 304 (A) I.P.c.

2. The case of the prosecution can be summarised as follows:

On 29-07-2003 at about 11 a.m. the accused drove his pick-up van bearing Reg. No. KL-18/1728 along the Perambra-Kuttiadi public road in a rash and negligent manner endangering human life and dashed against the deceased Nani Amma who was walking along the eastern side of the road causing severe injuries to her to which she succumbed later and also hit against P.W.5 who was standing nearby resulting in his sustaining fracture of the bone of his right hand.

3. On the side of the prosecution 14 witnesses were examined as PWs 1 to 14 and 8 documents were got marked as Exts.P1 to P8.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those

circumstances and maintained his innocence. He contended that it was the negligent crossing by the deceased which resulted in the incident. The accused did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate, after trial, as per judgment dated 20-6-2006 found the revision petitioner guilty of the offences charged against him and sentenced him to simple imprisonment for three months under Sec. 279 I.P.C., simple imprisonment for three months under Sec. 338 I.P.C. and simple imprisonment for one year under Sec. 304 A I.P.C. On appeal preferred by the revision petitioner as Crl.A. No. 463 of 2006, the learned Sessions Judge, Kozhikode, altered the conviction under Sec. 338 to Sec. 337 I.P.C. but did not modify the sentence imposed under any of the penal provisions. Thus, the sentence imposed by the trial court was confirmed by the lower appellate court. Hence, this Revision.

6. Even though the learned counsel for the revision petitioner assailed the conviction recorded by the courts below on various grounds, in as much as the conviction has been entered after a careful evaluation of the oral and documentary evidence in the case, I see little scope for interference by this Court sitting in the rarefied revisional jurisdiction. The occurrence took place at 11 a.m. on 27-9-2003. The road at the scene of incident is a straight tarred road by name Perambra-Kuttiadi public road having 7 metres width for its tarred portion with a road margin on either side of the same. The road is running north-south. Revision petitioner was driving a pick-up van from south-north. Going by the scene mahazar, the scene of crime is towards the extreme eastern

end of the tarred portion of the road. This indicates that the revision petitioner was on the extreme wrong side of the road. After knocking down deceased Nani Amma aged 70 years the vehicle went amuck and ran into a tea shop causing severe injuries to P.W.5. The A.M.V.I report namely Ext.P7 does not show that the vehicle had any break failure or other mechanical defect. So, the incident was the direct consequent of the rash and negligent driving by the revision petitioner in a manner endangering human life. Hence, the conviction was rightly entered against the revision petitioner for offences punishable under Sections 279, 337 and 304 A I.P.C.

7. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. A flee bite sentence for a conviction under Section 304 A I.P.C. has been deprecated by the Apex court as well as this Court . However, having regard to the fact that at the place where the occurrence took place there was a cemented platform jutting into the road and reducing the width of the road which probably could have contributed to the occurrence, I am inclined to reduce the sentence imposed under Sec. 304 I.P.C. Accordingly, the sentence awarded to the revision petitioner under Sec. 304 A is reduced to simple imprisonment for four months. The sentence imposed on him under the other two penal sections is not interfered with. The substantive sentences shall run concurrently.

This revision is disposed of as above.

V.Ramkumar, Judge.